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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

No. 403

CHARLEY SINGLETON, MAGGIE DAVIS AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON; JEWEL BRAZIEL, NÉE JACKSON; EMMETT JACKSON, BY W. M. TYNOR, GUARDIAN, AND GUY PATTEN, ADMINISTRATOR, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF.

A. G. C. BIERER,
A. G. C. BIERER, JR.,
Counsel for Petitioners.

BIERER & BIERER,
Guthrie, Oklahoma,
Of Counsel.

(36,217)

INDEX.

SUBJECT INDEX.

	Page
Petition:	
Caption	1
Statement	2
Rulings of the courts below	5
Questions presented	8
Jurisdiction	10
Reasons for granting certiorari	11
Precedent	14
Conclusion	15
Brief:	
Opinions below	19
Jurisdiction	19
Facts	21
Argument:	
1. The controlling Federal statute has been misconstrued	21
2. Award of the United States Veterans' Bureau precludes review by the State court	33
3. The court below has misconstrued the Federal statute defining permitted beneficiaries	36
Conclusion	37
Cases Cited:	
Battaglia vs. Battaglia (Tex. App.), 290 S. W., 296	30
Branch Banking & Trust Co. vs. Brinkley, 196 N. Car., 40; 144 S. E., 530	30
Condon vs. Mallan, 58 App. D. C., 371; 30 Fed., 2d, 995	30, 31
Cross Estate, 152 Wash., 459; 278 Pac., 144	28
Dempster Estate, 247 Mich., 459; 226 N. W., 243	30
Eblen vs. Jordan, 161 Tenn., 509; 33 S. W., 2d, 65	30
Funk vs. Luithle, 58 N. Dak., 416; 226 N. W., 595	30
Fisher's Estate, In re, 302 Pa., 516; 153 Atl., 736	28
Grady vs. Holl, 199 N. Car., 666; 155 S. E., 565	30
Greiner's Estate, In re, 195 Wis., 332; 218 N. W., 437, 438	34
Hallbom Estate, In re, Hallbom vs. Pagel, 178 Minn., 402; 229 N. W., 344	14, 28, 31
Harris Estate, In re, 229 N. W., 344	28
Hogan's Estate, In re, — Utah, —; 297 Pac., 1007	29, 32
Johnson's Estate, In re, 154 S. Car., 359; 151 S. E., 573	30

Page

McQuade's Estate, In re, 88 Colo., —; 296 Pac., 1023..... 29, 32
Moss vs. Moss, 158 S. Car., 243; 155 S. E., 597..... 30
National Union Bank vs. McNeal, 148 S. Car., 30; 145 S. E., 549 30
Pagel, Adm'r, vs. McLean, Adm'r, 282 U. S., —; 75 L. Ed., Adv. Sheets, 531..... 15
Palmer vs. Mitchell, 117 Ohio St., 87; 158 N. E., 187; 55 A. L. R., 556..... 30
Pivonka's Estate, 202 Iowa, 855; 211 N. W., 246; 55 A. L. R., 570..... 29, 31
Price vs. McConnell, 153 Va., 567; 149 S. E., 515..... 30
Pruden's Estate, In re, 199 N. Car., 256; 154 S. E., 7.... 30
Robbin's Petition, 126 Me., 555; 140 Atl., 356..... 30
Root's Estate, In re, Root vs. Childs, 58 N. Dak., 422; 226 N. W., 598..... 30, 34
Ryan's Estate, In re, 222 N. Y. S., 253 and 891..... 30
Shultz Estate, In re, 96 Pa., 514..... 30
Sizemore vs. Sizemore, 222 Ky., 713; 2 S. W., 2d, 395..... 28
Singer vs. Tikalsky, 192 Wis., 524; 213 N. W., 479..... 30
Silberschein vs. United States, 278 U. S., 255..... 12
Sims vs. Arehart, 254 Ill. App., 219..... 30
Smallwood, In re, 156 Tenn., 222; 300 S. W., 572..... 30
Storum's Estate, In re, 221 N. Y. S., 771..... 30, 31
Sutton's Ex'r vs. Barr's Adm'r, 219 Ky., 548; 293 S. W., 1075 28
Tax Commission of Ohio vs. Rife, 119 Ohio State, 83; 158 N. E., 187..... 28
Tolbert vs. Tolbert, 41 Ga. App., 737; 154 S. E., 655..... 30
Turner vs. Thomas, Tex. App., 30 S. W., 2d, 558..... 30
United States vs. Williams, 278 U. S., 255..... 12, 35
Wade vs. Madding, 161 Tenn., 88; 28 S. W., 2d, 642..... 30
White vs. United States, 270 U. S., 175..... 26
Whaley vs. Jones, 152 S. Car., 328; 149 S. E., 841..... 30
Williams vs. Eason, 148 Miss., 446; 114 So., 338; 55 A. L. R., 574 30
Woodworth vs. Tepper, 152 Md., 382; 136 Atl., 536; 55 A. L. R., 578..... 30, 31

Statutes Cited:

The World War Veterans' Act:

Sec. 308, 38 *U. S. C. A.*, 514; Act of June 7, 1924, C. 320, Sec. 308, 43 Stat., 625..... 2, 5, 6, 7, 8, 10, 20, 23, 24, 28, 32, 37

Amendment of March 4, 1925, C. 553, Sec. 14, 43 Stat., 1310 ..... 2, 5, 6, 7, 8, 10, 20, 23, 24, 28, 34

Page

Sec. 300, 38 *U. S. C. A.*, 511; Act of June 7, 1924, C. 320, Sec. 300, 43 Stat., 624; Act of March 4, 1925, C. 553, Sec. 12, 43 Stat., 1308; Amd. July 2, 1926, C. 728, Sec. 14, 44 Stat., 798..... 5, 9, 23, 36

Sec. 19, 38 *U. S. C. A.*, 445; Act of June 7, 1924, C. 320, Sec. 19, 43 Stat., 612; Act of March 4, 1925, C. 553, Sec. 12, 43 Stat., 1302..... 9, 34

Sec. 22, 38 *U. S. C. A.*, 454; Act of June 7, 1924, C. 320, Sec. 22, 43 Stat., 613..... 28

The War Risk Insurance Act:

Act of October 6, 1917, C. 105; 40 Stat., Part 1, page 409, Sec. 402..... 21

Amendment, 1919, 41 Stat., 375..... 22

40 *Statutes at Large*, 401..... 5, 9, 22, 36

The Judicial Code. Sec. 237 (*b*):

28 U. S. C. A., 344 (*b*); R. S., 690, 709; March 3, 1911, C. 231, Secs. 236, 237, 36 Stat., 1156; December 23, 1914, C. 2, 39 Stat., 726; February 17, 1922, C. 54, 42 Stat., 366; February 13, 1925, C. 229, Sec. 1, 43 Stat., 937 ..... 10, 19

SUPREME COURT OF THE UNITED STATES.

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No. 403

CHARLEY SINGLETON, MAGGIE DAVIS AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON; JEWEL BRAZIEL, NÉE JACKSON; EMMETT JACKSON, BY W. M. TYNOR, GUARDIAN, AND GUY PATTEN, ADMINISTRATOR, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

The petition of Charley Singleton, Maggie Davis, and George Davis, petitioners, respectfully shows to the Court:

That this is a petition for writ of certiorari to review a decision and judgment of the Supreme Court of the State of Oklahoma in cause No. 17748 therein, entitled "*In re* Estate of Lee Ray Jackson, deceased;

Charley Singleton, Maggie Davis, and George Davis, plaintiffs in error *vs.* Edith Cheek, née Jackson; Jewel Braziel, née Jackson; Emmett Jackson, by W. M. Tynor, guardian, and Guy Patten, administrator, defendants in error."

The case is one to determine the distribution of the commuted balance of installments of war-risk insurance accruing after the death of the designated beneficiary of such insurance, under the United States World War Veterans' Act, Sec. 303; Act of June 7, 1924, chapter 320; Section 303; 43 Stat. 625, as amended by Act of March 4, 1925, chapter 553, Sec. 14; 43 Stat. 1310, being title 38, U. S. C. A., Sec. 514, which fund has been paid by the United States Veterans' Bureau to the administrator of the estate of the insured.

Statement of the Case.

The facts in this case are stipulated and agreed (R. 14, 22; 31, 32).

Lee Ray Jackson was a soldier in the late war, and was issued war-risk insurance in the principal sum of ten thousand ($10,000.00) dollars. He died intestate on March the 21st, 1921, a resident of Craig County, Oklahoma, and left surviving him an infant son, James LeRoy Jackson, about eight months old, and his widow, Mary Lucinda Jackson. The infant son died in March, 1922, leaving surviving him his mother, the insured's widow, Mary Lucinda Jackson. The estate of Lee Ray Jackson was administered upon in the County Court of Craig County, Oklahoma, in

case No. 3233, probate, and the administration concluded and distribution made and Mary Lucinda Jackson and James LeRoy Jackson determined to be the sole and only heirs of Lee Ray Jackson, deceased, and Mary Lucinda Jackson alone determined to be his heir, as inheriting the share of her deceased infant son, before the time when the administration was concluded, on October 9, 1922 (R. 4-6).

Mary Lucinda Jackson remarried and became the wife of the petitioner, Charley Singleton, and she died in March, 1923, leaving surviving her, as her sole heirs, the petitioners, Charley Singleton, her widower; Maggie Davis, her mother, and George Davis, her father.

Subsequently, it was determined by the United States Veterans' Bureau, Department of War Risk Insurance, that Lee Ray Jackson was permanently and totally disabled, while his insurance was in force, and that at his death, there had accrued to him by reason thereof, the sum of four hundred fifty-five and 04/100 ($455.04) dollars, and that the insurance continued in force. Previously, it had been thought that Jackson's insurance had lapsed. This was yearly renewable term insurance, and Mary Lucinda Jackson was the designated beneficiary thereunder. On the discovery that the insurance was in force, the administration of the estate of Lee Ray Jackson was reopened, with the respondent, Guy Patten, as the administrator *de bonis non*, and the Veterans' Bureau paid to Guy Patten, as such administrator, the sum of four hundred fifty-five and 04/100 ($455.04) dollars,

representing installments of insurance accruing before the death of the insured, and eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, representing the commuted value of installments of insurance moneys accruing after the death of the beneficiary, and paid to the administrator of the estate of Mary Lucinda Singleton, née Jackson, the sum of thirteen hundred sixty-five and 12/100 ($1,365.12) dollars, representing the monthly installments accruing from the date of the death of the insured to the date of the death of the beneficiary, said sum of thirteen hundred sixty-five and 12/100 ($1,365.12) dollars admittedly belonging to the beneficiary and being never in controversy in this case.

The Veterans' Bureau made its award in favor of Guy Patten, administrator of the estate of Lee Ray Jackson, deceased, and directed by letter on behalf of the director of said Bureau that the administrator should distribute same in accordance with the intestacy laws of the State of the insured's last legal residence, and advised that the insurance in the case had then been fully adjudicated by the Bureau (R. 20, 21, 22), said letter being dated November 30, 1925, and the award being made under date of August 18, 1925.

In said administration proceeding, as reopened, the respondents, Edith Cheek, Jewel Braziel, and Emmett Jackson, claim said war-risk insurance moneys as heirs of Lee Ray Jackson, deceased, by reason of being his sisters and brother, respectively. After the death of Mary Lucinda Jackson, said respondents

were the nearest surviving blood relatives to the insured. At the death of the insured, said insured's nearest relatives and heirs were his widow and son, as above set forth.

The parties as here aligned were similarly aligned in groups, as claimants in the county court, and subsequently throughout this litigation, the petitioners claiming as heirs of Lee Ray Jackson, at the date of his death, through his widow and son, and the respondents claiming as heirs of Lee Ray Jackson, determined as of the date of the death of the beneficiary, and as his next of kin at the latter date within the permitted class of beneficiaries under the War Risk Insurance Act (title 38, U. S. C. A., 511). The petitioners, Maggie Davis and George Davis, claim also, as next of kin, within the permitted class of beneficiaries, if distribution should be restricted to that class, as parents of the spouse of the insured, under the Act of Congress (40 Stat. 401).

Rulings Below.

The county court held in favor of the respondents as to the fund of eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, the commuted value of insurance falling due after the death of the beneficiary, and in favor of the petitioners as to the fund of four hundred fifty-five and 04/100 ($455.04) dollars, insurance accrued before the death of the insured, and made its decree accordingly, and found and held that under the Act of Congress of March 4, 1925 (title 38, U. S. C. A., 514), the commuted balance of

said insurance money was payable to the estate of the insured and, by virtue of said Act of Congress, vested in the heirs next surviving, within the permitted class of beneficiaries designated by the Act (title 38, U. S. C. A., 511) (R. 24; 22-25). The heirs within the permitted class as aforesaid were determined to be the respondents, Edith Cheek, Jewel Braziel, and Emmett Jackson (R. 24).

The cause was appealed to the District Court of Craig County, Oklahoma, and said District Court held in favor of the respondents on both funds (R. 34-36); sustaining the county court as to the eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollar fund, and reversing it as to the four hundred fifty-five and 04/100 ($455.04) dollar fund. The cause was appealed by the petitioners to the Supreme Court of the State of Oklahoma, said appeal being lodged in said Supreme Court September 3, 1926, upon case-made (R. 3-39) and petition-in-error (R. 1-2).

The Supreme Court of Oklahoma, acting through the Supreme Court Commission, Division No. 1, on March 13, 1928, decided said cause in favor of your petitioners, there plaintiffs-in-error (R. 40), reversing and remanding the cause for proceedings in accordance with the opinion, Reid, C., writing (R. 41-53), the court holding that the installments up to the insured's death should be distributed to the heirs as of the date of his death, and that under the Act of Congress applicable (38 U. S. C. A. 514) installments after the death of the beneficiary became ordinary assets of the estate, as of the date of the death of the insured,

and must be distributed to his heirs accordingly under State law (R. 41).

Respondents filed their petition for rehearing, claiming that the decision violated their rights under the Federal statutes applicable and under the intention of Congress (R. 53-56). This petition was by the court granted (R. 56), the order granting it vacated, the original opinion refiled and the petition for rehearing denied (R. 57). Respondents then applied for stay of mandate pending application to this Honorable Court for certiorari (R. 57), and an order to that effect was accordingly made (R. 58). Subsequently, however, respondents filed their second petition for rehearing (R. 59), which was sustained and the cause resubmitted (R. 66). The State Supreme Court then decided the cause on March 3, 1931, in favor of the respondents as to the larger fund involved, the sum of eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, representing installments accruing after the death of the beneficiary, although deciding in favor of the petitioners as to the smaller sum of four hundred fifty-five and 04/100 ($455.04) dollars, representing installments accruing before the death of the insured (R. 66), with an opinion of the court, Clark, V. C. J., writing (R. 67-71), affirming the judgment of the district court in the principal part, and reversing it in the minor part, as stated.

The court held that under the Federal statute, 38 U. S. C. A., 514, the installments accruing after the death of the beneficiary become assets of the estate of the insured, as of the date of the death of the benefi-

ciary, and go to the heirs of the insured, as of that date, and not as of the date of the death of the insured (R. 67), and that this result occurs by virtue of the Act of Congress (R. 70), and that the petitioners are not in the permitted class of beneficiaries under the Act of Congress (R. 71).

Petitioners filed their petition for rehearing April 8, 1931 (R. 74-80), within the time extended by the court (R. 73-74). In said petition for rehearing, petitioners squarely urged petitioners' position theretofore taken, that said decision was in conflict with the Federal statute, and improperly attempted to overturn the award of the Federal agency, the United States Veterans' Bureau. Said petition for rehearing was considered by the State Supreme Court upon its merits, orally argued and briefed, and resubmitted May the 15th, 1931 (R. 83); and thereupon, said decision in the State Supreme Court became final. The mandate from said court was stayed by order of Mr. Chief Justice E. F. Lester, July 3, 1931 (R. 84), pending petition to this Honorable Court for writ of certiorari for review of said cause.

Questions Presented.

Your petitioners believe that the following Federal questions are presented:

(1) Whether title 38, U. S. C. A., Sec. 514 (World War Veterans' Act, Sec. 303), Act of June 7, 1924, C. 320, Sec. 303; 43 Stat. 625, as amended by Act of March 4, 1925, Chapt. 553, Sec. 14; 43 Stat. Sec. 1310, requires distribution of the commuted value of

installments of war risk insurance, accruing after the death of the designated beneficiary, paid by the United States Veterans' Bureau to the administrator of the estate of the deceased insured, to insured's next of kin surviving at the time of such payment, within the permitted class of beneficiaries under said act (38 U. S. C. A., 511), as held by the court below, or whether such funds are distributable to the heirs (next of kin) of the insured, as determined by the laws of descent and distribution of the State of the insured's last legal residence.

(2) Whether an award made by the United States Veterans' Bureau, providing for payment of war-risk insurance funds to an administrator of the estate of a deceased insured, with directions for payment to the heirs of the insured, and providing how said heirs shall be determined, is subject to review by the State courts, as inferentially held by the court below, or whether said award is final and controlling unless challenged by action under title 38, U. S. C. A., Sec. 445, in the United States district court, as contended by petitioners.

Your petitioners believe, also, that a third question is presented, subject however, and inferior to the above two major questions; that is:

(3) Whether the parents of the spouse of the insured soldier take a status as next of kin to the insured, in a nearer class than brothers and sisters of the insured, by virtue of the Act of Congress (40 Stat. 401) defining "parents", for purposes of determining permitted

beneficiaries under war-risk insurance policies, as including parents of the spouse of the insured, as contended by the petitioners, Maggie Davis and George Davis, and denied by the court below (R. 71).

Jurisdiction.

The jurisdiction of this Honorable Court is invoked under Section 237 of the Judicial Code, as amended by Act of February 13, 1925, Sec. 237 (*b*), providing:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or Statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. * * *"

Petitioners in this cause specially set up and claim, and have claimed throughout this litigation, the title and right to the insurance moneys involved in this cause, as proper distributees from the estate of the insured, of said moneys, under and by virtue of the World War Veterans' Act, Section 303, as amended (title 38, U. S. C. A., 514). Petitioners also claim,

as the proper parties to receive said fund under the award of the United States Veterans' Bureau, acting under its commission held and authority exercised under the United States.

Reasons for Granting Certiorari.

Petitioners respectfully submit that writ of certiorari should be granted in this cause for the following reasons:

(1) That the State court has decided a Federal question of substance not heretofore determined by this Court. In support of said reason, petitioners show that the court below, in its opinion, squarely predicates its decision of said cause upon Section 303 of the World War Veterans' Act, as amended by Act of Congress, March 4, 1925, citing U. S. Compiled Statutes, Section 9127½-303, which is the same as 38 U. S. C. A., 514, and holds that the Federal statute requires the payment of war-risk insurance funds commuted from installments accruing after the death of the beneficiary to the heirs of the insured, as of the date of the beneficiary's death.

The court below was quite evidently influenced by and proceeded upon the idea that the proper distributees of this fund must fall within the permitted class of beneficiaries, under the War Risk Insurance Act.

(2) Petitioners urge, as an additional reason for granting certiorari, that the court below has decided a Federal question of substance in a way probably

not in accord with applicable decisions of this Court.

In support of said second reason, petitioners show that the court below has by its decision, without comment in its opinion, refused petitioners' contention that the award of the United States Veterans' Bureau of the funds involved in this cause was final, in the absence of an action in the United States District Court, by the respondents, based on their disagreement with the Bureau's award, under title 38, U. S. C. A., Section 445. This Court, in *United States vs. Williams,* 278 U. S. 255, held that the decision of the director of the United States Veterans' Bureau was final upon a claim for payment of adjusted compensation, under the World War Veterans' Act; that the Bureau has exclusive authority to pass upon claims under that act, and that its decision is conclusive, citing *Silberschein vs. United States,* 266 U. S. 221, 225.

Petitioners submit that the only distinction between adjusted compensation, under the World War Veterans' Act, and War Risk Insurance thereunder, so far as the finality of the Bureau's award is concerned, is that a special action is provided by title 38, U. S. C. A., Section 445, giving any claimant to insurance an action in the Federal district court where a disagreement exists between the claimant and the Bureau, and that otherwise the insurance case and the compensation case take exactly the same rule.

Respondents not having availed themselves of the Federal remedy provided, to contest the Bureau's award directing that the funds be distributed to the

heirs of the insured, as determined under the State law, petitioners contend that the Bureau's award was final; that the State courts exceeded their jurisdiction and authority in refusing the same, and that the opinion of the court below, reaching a holding contrary to the Bureau's award, is in conflict with the decisions of this Court above cited.

(3) Petitioners further suggest that certiorari should be granted in this cause in order that a uniform rule may be laid down, determining the extent to which the applicable Act of Congress, 38 U. S. C. A., 514, controls and defines the persons entitled to receive the commuted balance of war-risk-insurance money, payable after the death of the designated beneficiary, on contracts of yearly renewable term insurance. In support of said reason, petitioners show that the question has many times arisen in various State courts and is a question of important public moment, the subject of much litigation, and involves large amounts of money; that the courts of the various States have differed in their interpretation of said Act of Congress, as to whether distribution must be made by the administrator of the insured to the heirs of the insured, as determined by State law, or to those heirs falling within the permitted class of beneficiaries, for designation as beneficiaries under the War Risk Insurance Act; as to whether said Act of Congress vests said insurance funds in the estate as ordinary assets or otherwise, and as to the period of time and the extent to which said Act of Congress is applicable.

Citation and discussion of such State cases would be too voluminous to be inserted here, but are treated in petitioners' brief, appended to and submitted with this petition. Petitioners submit that a decision by this Honorable Court construing and defining said provision of the World War Veterans' Act would add greatly in settling the law and ending such confusion.

Precedent for Certiorari.

On October 13, 1930, this Court, in its memorandum decision #176, granted certiorari to the Supreme Court of the State of Minnesota, in the case of *Pagel vs. Hallbom*, to review the decision of the Minnesota Court in *Hallbom vs. Pagel*, 179 Minn. 402; 229 N. W. 344. There the Minnesota court had held that a war-risk insurance fund, identical with that in the case at bar, goes into the estate of the insured, for the administrator to act as a conduit to get the fund from the Federal Government to the distributees, as beneficiaries under the War Risk Insurance Act and not as heirs, and that the fund does not become assets of the estate.

On that holding, this Court granted certiorari (282 U. S.—, not yet officially reported); 75 L. ed., advance sheets, 6; 51 S. Ct. 25.

Subsequently, the respondent, Hallbom, died, and the suit was revived, after certiorari was granted, by substitution of her administrator as respondent. On that situation, the court felt that other questions had arisen, which rendered necessary the remanding of the cause to the State court for further proceedings, with-

out passing on the question of distribution there and here involved, and judgment was vacated and the cause remanded by order of this Court, April 13, 1931, in *Pagel, administrator, vs. McLean, administrator,* 282 U. S. — (not yet officially reported); 75 L. ed.; advance sheets, 531.

Petitioners submit that the considerations which induced the court to receive that case for certiorari are also present here, and the necessity of a decision of the questions involved, that the law may be settled as to the effect of said Federal statute, still remains.

Conclusion.

Your petitioners state that the judgment of the Supreme Court of the State of Oklahoma in this cause is final; that it became final upon the overruling of petitioners' petition for rehearing, on June 30, 1931, and not before, and that said decision is erroneous in so far as it awards the fund of eight thousand nine hundred twenty-five and no/100 ($8,925.00) dollars, representing the commuted value of war-risk insurance moneys accruing after the date of the death of the designated beneficiary to the respondents herein; that said decision rests upon a misinterpretation, misapprehension and misapplication of the controlling Federal statute, and that this Honorable Court should require the case to be certified to it for its review and determination under the provision of the Judicial Code providing for certiorari from State courts of last resort, and under the rules of this Court.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued, under the seal of this Court, directed to the Supreme Court of the State of Oklahoma, sitting at Oklahoma City, within said State, commanding said court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings of said court had in said cause, to the end that this cause may be reviewed and determined by this Court, as provided by Section 237 (*b*) of the Judicial Code, as amended, or that your petitioners may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provision of the Judicial Code, and that said judgment of the said Supreme Court of the State of Oklahoma in said cause, so far as the same determines the distribution of said fund of war-risk insurance moneys accruing after the date of the death of the designated beneficiary, be reversed by this Honorable Court, with directions that said fund be distributed to the petitioners as heirs-at-law of the deceased insured.

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Counsel for Petitioners.

BIERER & BIERER,
Guthrie, Oklahoma,
Of Counsel.

STATE OF OKLAHOMA,
County of Logan, ss:

A. G. C. Bierer, being first duly sworn, on oath deposes and says that he is counsel for the petitioners in

the above cause; that he knows of the above proceedings had, and that the facts stated in the above petition for writ of certiorari are true to the best of his knowledge and belief.

A. G. C. BIERER.

Subscribed and sworn to before me this 22d day of August, 1931.

[SEAL.] CORINNE ESTUS,
Notary Public.

My commission expires Mar. 10, 1934.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 403

CHARLEY SINGLETON, MAGGIE DAVIS AND GEORGE DAVIS, PETITIONERS,

vs.

EDITH CHEEK, NÉE JACKSON; JEWEL BRAZIEL, NÉE JACKSON; EMMETT JACKSON, BY W. M. TYNOR, GUARDIAN, AND GUY PATTEN, ADMINISTRATOR, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF.

BRIEF.

In support of the above and foregoing petition for writ of certiorari your petitioners submit their suggestions in the following brief.

Opinions Below.

The court below, the Supreme Court of the State of Oklahoma, wrote two opinions in this cause, the last and final opinion being filed in that court March 3, 1931 (R. 67-71), and this opinion became final upon the court's order denying these petitioners' petition for rehearing, on June 30, 1931 (R. 83). The opinion of the court of March 3, 1931, reversed its former opinion in the case, filed March 13, 1928, written by the Oklahoma Supreme Court Commission (R. 41-53). Neither opinion has been officially reported, but these opinions appear fully in the record and at the pages here indicated.

Jurisdiction.

The grounds upon which we invoke the jurisdiction of this Court are set forth under the heading "Jurisdiction", in the petition on page 10. Jurisdiction is predicated upon Section 237 (*b*) of the Judicial Code, as amended by Act of February 13, 1925, Chapt. 229, Sec. 1; 43 Stat. 937, 28 U. S. C. A. 344. The pertinent provision of the statute is quoted in the petition, page 10.

The decree sought to be reviewed is the final decision of the Supreme Court of the State of Oklahoma, filed March 3, 1931 (R. 67-71), which became final upon the court denying these petitioners' petition for rehearing, without further opinion, on June 30, 1931 (R. 83).

The decision of the court was expressly based upon a construction of the World War Veterans' Act of

June 7, 1924, Chapt. 320, Sec. 303; 43 Stat. 625, as amended by Act of Congress of March 4, 1925, Chapt. 553, Sec. 14; 43 Stat. 1310, appearing as Title 38, U. S. C. A., 514.

That the court rested its decision upon its construction of said Federal statute is apparent from a reading of the opinion, especially the second syllabus (R. 67), and a large part of the opinion itself (R. 69-71).

Petitioners claim to be the rightful distributees of war-risk insurance moneys paid by the United States Government, through its agency, the Veterans' Bureau, to the administrator of the estate of the insured, under said act of Congress, claiming their right and title to said funds under and by virtue of said act as amended March 4, 1925. Petitioners' claim was denied by the court below, said denial being grounded upon the court's interpretation of said Federal statute. Petitioners further claim to be entitled to said moneys under the award made by the United States Veterans' Bureau under its commission and authority exercised under the United States, and this claim was denied without any reference being made thereto in the opinion. These Federal contentions were urged by petitioners throughout the litigation, and in their briefs in the Supreme Court of Oklahoma. Although the petition in error in that court specified errors in general terms, without specific reference to the Federal statutes, still it is evident from the court's opinion that the Federal statutes were passed upon and construed, and the decision rested thereupon. Further, the petitioners in their petition for rehearing in the State Supreme Court expressly raised the Federal

grounds of contention (R. 75, 76), and said petition for rehearing was heard on its merits and orally argued, the Federal grounds being stressed before said State court (R. 83), and said petition for rehearing denied (R. 83).

The Supreme Court of the State of Oklahoma is the highest court of said State in which a decision could be had, and petitioners exhausted their remedies there when they presented their petition for rehearing.

Facts.

The facts are stated in the petition, on page 2 and following it. We emphasize the award of the United States Veterans' Bureau under date of August 18, 1925, awarding the fund involved to the administrator of the estate of the insured, with direction that it be distributed in accordance with the intestacy laws of the State of insured's last legal residence, which was Oklahoma, and advising that the insurance in the case was thus fully adjudicated by the Bureau.

ARGUMENT.

The Controlling Federal Statute Has Been Misconstrued.

In order to understand the effect and significance of the Federal statute involved in this case, a glance at its history is necessary.

The first act of Congress on the subject was the War Risk Insurance Act of 1917, Chapt. 105, Art. 4; 40 Stat. 398, 409, which provided for the issue by the

Government of war-risk term insurance policies, and otherwise provided, so far as material here, that

> "The insurance * * * shall be payable only to a spouse, child, grandchild, parent, brother or sister, * * * or to any or all of them. * * * If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated, beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated," etc. (Section 402).

A section of this act (40 Stat. 401) defined the term "parent" to include father, mother, grandfather, grandmother, step-father and step-mother, whether of the person in the United States service, or of his spouse. The act was amended in December, 1919 (41 Stat. Part 1, page 375), to include uncles, nephews, nieces, brothers, and sisters-in-law, and providing that if no person within the permitted class of beneficiaries survived the insured, his estate should receive the balance of the insurance. Section 15 of that Act provided as follows:

> "That if any person to whom such yearly renewable term insurance has been awarded

dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments."

The entire act was amended and re-enacted and extended considerably by the World War Veterans' Act of 1924, Chapt. 320, 43 Stat. 624, 625, Section 303 of that act being the section governing payment of the balance of the insurance upon the death of the beneficiary designated by the insured. That act retained the permitted class of beneficiaries (Sec. 303, 38 U. S. C. A. 511), and carried the provision that in case the beneficiary did not survive the insured, or survived the insured and died before the payment of the full 240 monthly installments, in which the insurance payment was divided, then the balance of said insurance commuted to a present value should be paid to the administrator of the estate of the insured for distribution to such persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal proper[illegible] case of intestacy, and in the absence of any

such surviving next of kin, within the permitted class of beneficiaries, then said money should be paid to the estate of the insured.

We emphasize that up to and including the World War Veterans' Act of 1924 the applicable provision of the act of Congress had always provided that these moneys, balance of war-risk insurance after death of designated beneficiary, should go to such persons among the next of kin of the insured as would take by intestacy under State law, limited, however, to persons within the permitted class of beneficiaries under the section of the statute limiting beneficiaries who might be designated by the insured as his beneficiary when he took out his insurance policy, the earlier acts providing for payments direct to such persons, and the act of 1924, providing for payment to the administrator of the insured's estate, for distribution to such persons. Thereafter, however, by the act of March 4, 1925, Chapt. 553, Sec. 14; 43 Stat. 1310, appearing as Title 38, U. S. C. A., 514, the provision of Sec. 303 of the World War Veterans' Act was drastically amended, and was altered to read that these insurance moneys should be paid "to the estate of the insured"; the direction for distribution of the fund from the estate of the insured, to persons within the permitted class of beneficiaries, being entirely eliminated, and the amended act was expressly made retroactive and placed in effect as of October 6, 1917.

The section referred to reads as follows:

> "SEC. 303. If no person within the permitted class be designated as beneficiary for yearly re-

newable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: Provided, That all awards of yearly renewable term insurance which were in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: Provided further, That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment. * * * This section shall be deemed to be in effect as of October 6, 1917."

Under that act, it seems apparent that Congress deliberately abandoned its previous plan of limiting distribution of war-risk insurance funds remaining at the death of the designated beneficiary to persons within the class eligible to be named as beneficiaries by the insured, upon his taking out his policy, and left such moneys to go to the heirs of the insured, that is, to his next of kin, under the State laws of descent and dis-

tribution. These funds, under said amendment, go "to the estate of the insured", and there the congressional direction stops.

Under that amendment, the United States Veterans' Bureau seems to have adopted the obvious construction, as shown by its direction to the administrator in the case at bar, that the funds be distributed in accordance with the intestacy laws of the State of insured's last legal residence (R. 21, 22).

The instant case does not fall within any exception clause in the amendment. The award of insurance in the case at bar was not made until August 18, 1925 (R. 22), after the amendment of March 4, 1925, was in full force and effect. There was no award in the course of payment at that time, and the retroactive provision of the act was fully effective in this case.

We beg leave to digress at this point to state that in the course of this litigation through the court below the contention of respondents at all times was that the amendment of March 4, 1925, was inapplicable as invading vested rights of respondents, and the contention of the petitioners was that said amendment was fully applicable; yet the court below, in its opinion, held the 1925 amendment applicable, and yet by its construction of that amendment reached the conclusion that the respondents should take the fund involved.

That the retroactive provision of the 1925 amendment is a valid and proper exercise of the power of Congress is settled by the opinion of this Court in *White vs. United States*, 270 U. S. 175, in which this Court, Mr. Justice Holmes writing, pointed out that

the certificate of insurance was made subject, in all respects, to any amendatory legislation; that the possibility of changes in rights thereunder, by congressional enactment, or by regulations duly adopted thereunder, was one of the terms and conditions of the insurance contract, and that the amendment was valid and retroactive even though it might deprive those within the permitted class of beneficiaries of the right to take or share in the installments payable after the death of the designated beneficiary. That holding by this Court has been repeatedly followed in State decisions in this class of cases. We deem it unnecessary to encumber this brief with citations of such State cases, in view of the final authority of the decision in the *White* case.

Prior to the 1925 amendment, *supra*, the courts had generally and properly held, under the former acts, that the balance of war-risk insurance funds after the death of the beneficiary should be paid to the insured's next of kin, or to his administrator for the benefit of his next of kin, within the permitted class of beneficiaries laid down by the War Risk Insurance Act and the World War Veterans' Act. Since the amendment, a few cases from State courts have held to the same effect, most of them predicating their decisions expressly upon a supposed policy of Congress to limit the persons who might participate in war-risk insurance moneys, under any circumstances, to persons within the class made eligible as beneficiaries for designation in the insurance contract, with the idea that these persons would be close blood relatives of the insured, and

that Congress intended only such persons to share in these funds.

Such cases are *In re Estate of Hallbom,* 179 Minn. 402; *In re Cross Estate,* 152 Wash. 459; 278 Pac. 144, to which this Court granted certiorari October 13, 1930. Case No. 176, 282 U. S. — (not yet officially recorded); 75 L. Ed. 6; 51 S. Ct. 25. *In re Harris Estate,* 229 N. W. 344; *Sutton's Ex'r vs. Barr's Adm'r,* 219 Ky. 543, 293 S. W. 1075; *Sizemore vs. Sizemore,* 222 Ky. 713, 2 S. W. 2d, 395, and to a certain extent, *In re Fisher's Estate,* 302 Pa. 516, 153 Atl. 736, and *Tax Commission of Ohio vs. Rife,* 119 Ohio State 83, 158 N. E. 187.

These cases proceed upon the theory that the administrator of the estate of the insured is a mere trustee or conduit to get the money from the Government to the particular beneficiaries within the eligible class as beneficiaries of the war-risk insurance acts and policies of Congress, and not as heirs.

Most of such decisions, we submit, arise in cases where the principal point involved is the question of the liability of these funds for debts or taxes, and arise from the desire of the various courts to exempt such funds for such purposes, and where the courts have overlooked another section of the World War Veterans' Act, 43 Stat. 613, 38 U. S. C. A. 454, expressly exempting the funds from liability for debts or taxes.

Both the Ohio case and the Washington case, above referred to, are such cases; the courts departing from a previously expressed contrary rule to reach a de-

cision exempting these funds from the claims of creditors or tax collectors. The two Kentucky cases, *Sutton's Ex'r vs. Barr's Adm'r, supra,* and *Sizemore vs. Sizemore,* are the only cases we have found where the court has adopted the device adopted by the court below, in the instant case, or reading into the Federal statute and into the supposed policy of Congress the thought that the heirs of the deceased insured should be determined as of the date of the death of the beneficiary, and not as of the date of the death of the insured.

All of the above cases, and particularly the Kentucky cases cited, have been expressly refused and repudiated by the courts of a number of other States, in passing upon this question, and are plainly not in accord with the overwhelming weight of authority.

The following authorities all hold that under the 1925 amendment, providing for payment of the balance of war-risk insurance moneys upon the death of the designated beneficiary, to the estate of the insured, such moneys become a part of the estate, and go to the heirs or next of kin of the insured, as determined by the State laws of descent and distribution, like any other asset; it following necessarily as a matter of elementary law that the persons who take, on distribution of the estate, are the heirs of the insured, determined as of the date of death of the insured. *In re McQuade's Estate,* 88 Colo. —, 296 Pac. 1023; *In re Hogan's Estate,* — Utah —, 297 Pac. 1007 (recent cases, official citation not available); *In re Pivonka's Estate,* 202 Iowa, 855, 211 N. W. 246, 55 A. L. R. 570;

Palmer vs. Mitchell, 117 Ohio St. 87, 158 N. E. 187, 55 A. L. R. 556. *In re Storum's Estate,* 221 N. Y. S. 771; *In re Ryan's Estate,* 222 N. Y. S. 253 and 891; *Eblen vs. Jordan,* 161 Tenn. 509, 33 S. W. 2d, 65. *Wade vs. Madding,* 161 Tenn. 88, 28 S. W. 2d, 642; *In re Smallwood,* 156 Tenn. 222, 800 S. W. 572; *Battaglia vs. Battaglia,* Tex. App., 290 S. W. 296; *Turner vs. Thomas,* Tex. App., 30 S. W., 2d, 558; *Condon vs. Mallan,* 58 App. D. C. 371, 30 Fed., 2d, 995. *In re Dempster Estate,* 247 Mich. 459, 226 N. W. 243; *Singer vs. Tikalsky,* 192 Wis. 524, 213 N. W. 479; *In re Pruden's Estate,* 199 N. Car. 256, 154 S. E. 7; *Grady vs. Holl,* 199 N. Car. 666, 155 S. E. 565; *Branch Banking & Trust Co. vs. Brinkley,* 196 N. Car. 40, 144 S. E. 530; *In re Johnson's Estate,* 154 S. Car. 359, 151 S. E. 573; *National Union Bank vs. McNeal,* 148 S. Car. 30, 145 S. E. 549; *Moss vs. Moss,* 158 S. Car. 243, 155 S. E. 597; *Root vs. Childs,* 58 N. Dak. 422, 226 N. W. 598; *Funk vs. Luithle,* 58 N. Dak. 416, 226 N. W. 595; *Williams vs. Eason,* 148 Miss. 446, 114 So. 338, 55 A. L. R. 574; *Tolbert vs. Tolbert,* 41 Ga. App. 737, 154 S. E. 655; *In re Shultz Estate,* 96 Pa. Super., 514; *In re Ogilvie's Estate,* 291 Pa. 326, 139 Atl. 826; *Woodworth vs. Tepper,* 152 Md. 332, 136 Atl. 536, 55 A. L. R. 578; *Price vs. McConnell,* 153 Va. 567, 149 S. E. 515; *Petition of Robbins,* 126 Me. 555, 140 Atl. 356; *Sims vs. Arehart,* 254 Ill. App. 219; *Whaley vs. Jones,* 152 S. Car. 328, 149 S. E. 841.

The Case of *Whaley vs. Jones* from South Carolina, *supra,* was attempted to be brought before this Court on writ of certiorari, and certiorari was denied, 280

U. S. 556; 74 L. Ed. 611, October 14, 1929. The holding was that the commuted value of war-risk insurance installments accruing after the death of the designated beneficiary, paid to the estate of the insured under the Federal statute, as amended in March, 1925, becomes part of the *corpus* of the estate, ceases to be insurance, and becomes assets in the hands of the administrator, to be administered in accordance with State law. The only two cases involving this question, which have been brought before this Court, are *Whaley vs. Jones,* in which certiorari was denied, and *Hallbom vs. Pagel,* 179 Minn. 402, 229 N. W. 344, which went the other way, and on which this Court granted certiorari, as above discussed in this brief and the petition.

The above citation of decided authorities from State courts may seem too voluminous to be listed here. It is no doubt too voluminous for the discussion and analysis of these authorities which we would like to give. We cite the cases because they are all authorities where State courts, in construing the acts of Congress applicable, have sustained the contention which we make here, and we cite them all to show the division of authority in favor of our contention and against the few scattered cases which have taken the contrary view, and which alone would sustain the court below in its conclusion in this case. We recommend especially to the court's attention *In re Pivonka's Estate,* 202 Iowa 855, 211 N. W. 246; 55 A. L. R. 570; *In re Storum's Estate,* 221 N. Y. S. 771; *Woodworth vs. Tepper,* 152 Md. 332, 136 Atl. 536, 55 A. L. R.

578; *Condon vs. Mallan,* 30 Fed., 2d, 995; *In re McQuade's Estate,* 88 Colo. —, 296 Pac. 1023, and *In re Hogan's Estate,* — Utah —, 297 Pac. 1007.

We submit that upon the above decision from various State courts of the land, the overwhelming weight of authority is to the effect that the 1925 amendment to the World War Veterans' Act, 38 U. S. C. A. 514, above cited and quoted, controls the distribution of these war-risk insurance funds upon the death of the designated beneficiary; that it requires the payment of such funds to the estate of the insured, and from there on leaves the distribution and the determination of the distributees to the State laws of descent and distribution. We submit that the intent of Congress, in leaving out of the 1925 amendment the provision always present in previous acts on the subject, that distribution should be limited to persons within the permitted class of beneficiaries, whom the insured might have selected as his beneficiary, is plain, and that any attempt by State courts to read into the act a continuation of the intention and policy of former acts so to limit such distribution is wholly unwarranted.

We submit that an attempt by a State court to read into the act, a provision that the heirs of the insured must be determined as of the date of the death of the beneficiary, or the date when the money actually comes into the estate, on payment by the United States Veterans' Bureau, instead of determining the heirs as of the date of the death of the insured, under elementary general law, is quite unwarranted.

If these conclusions be sound, then petitioners have a right to the war-risk insurance moneys in the hands of the administrator of the estate of the insured in this case, as heirs-at-law of the insured, claiming through his widow and son, as heirs at the time of his death, under and by virtue of the Federal statute directing that these funds be paid to the insured's estate, and leaving the distribution from the estate, to the distributees, to the State law of descent and distribution. That being so, the court below has misconstrued the Federal statute, in holding that it requires the conclusion reached by that court, and directs the determination of the heirs of the insured to be made as of the time of the death of the beneficiary, or that it requires the limiting of the persons to participate in these funds, to persons within the permitted class of beneficiaries named in another section of the Act.

Award of the United States Veterans' Bureau Precludes Review by the State Court.

The United States Veterans' Bureau, in making its award in this case, made the award to the estate of Lee Ray Jackson, the insured, and paid the money to his administrator and directed that it be distributed according to the laws of descent and distribution of the State of Oklahoma (R. 21, 22).

The Bureau stated in the same communication that the matter of this insurance was then fully adjudicated by the Bureau. There was no requirement or even suggestion that the distributees of the fund from the estate must be persons within the permitted class

of beneficiaries, nor that any other rule, than the ordinary and well established rule of descent and distribution, should be adopted in determining the heirs, that established rule being that the date to be looked to for such determination of heirs, was the date of the death of the intestate insured.

A Federal remedy is provided for claimants to war-risk insurance moneys, aggrieved at an award made by the Bureau. That remedy is a suit against the United States, in Federal district court, for the proper district, and is provided by Act of June 7, 1924, Chapt. 320, Sec. 19; 43 Stat. 612, as amended by Act of March 4, 1925, Chapt. 553, Sec. 2; 43 Stat. 1302, being 38 U. S. C. A. 445.

The contention of petitioners is, and has been throughout this litigation, that when respondents failed to bring such an action in the Federal court, the award of the Veterans' Bureau became final and conclusive, and no other standard could be applied for the distribution of these funds than the ordinary and regular State law of intestate succession. This contention is sustained by two decisions of State courts of last resort. *In re Greiner's Estate,* 195 Wis. 332, 218 N. W. 437, 438, and *In re Root's Estate,* 58 N. Dak. 422, 226 N. W. 598, 600; both of which authorities squarely hold that the question of distribution of war risk insurance moneys, accruing after the death of the designated beneficiary, is a matter in the first instance for the United States Veterans' Bureau, with an action in the United States district court for the purpose of establishing a right to the fund, open to

any claimant aggrieved by the Bureau's decision, and not subject to review by State courts.

We feel that this contention is further supported by the decision of this Court in *United States vs. Williams*, 278 U. S. 255. That was not an insurance case, but a case on adjusted compensation, under the World War Veterans' Act, which subject is treated in another section of the same act, and for recovery or determination of which no remedy by court action is provided, as in the case of insurance. Otherwise, the administration of that part of the World War Veterans' affairs, having to do with compensation, is placed in the hands of the Veterans' Bureau, exactly the same as is done with the insurance phases of veterans' administration.

The Bureau is the agency of the United States Government, placed in charge of these matters. The finality of its determinations, with respect to insurance, is less complete than with respect to compensation, only by virtue of the section above cited, which gives a court remedy in case of disagreement, on an insurance claim, between the Bureau and the claimant. That remedy is the only remedy provided by the act. It is a complete remedy in itself.

Respondents not having taken advantage of that remedy, we contend that the Bureau's decision and award is quite as conclusive and final as it would be on a claim for adjusted compensation. This Court held in the *Williams* case that the Bureau's authority is exclusive, and its decision final, unless wholly arbitrary and capricious. We submit that the assumption by the

State courts below of jurisdiction to review the award of the Veterans' Bureau, is not only wholly erroneous and unwarranted, but is probably in conflict with this Court's decision in the *Williams* case, as above set forth.

The Court Below Has Misconstrued the Federal Statute Defining Permitted Beneficiaries.

Petitioners contend that should the court determine that distribution of the war-risk insurance fund involved should be limited to persons falling within the class permitted as beneficiaries by the act of Congress defining that class, to wit, 43 Stat. 624, as amended, 38 U. S. C. A. 511, still two of the petitioners are within that class, and their relation under the acts defining the permitted beneficiaries is closer to the insured than that of the respondent, because the petitioners, Maggie Davis and George Davis, are mother and father, respectively, of Mary Lucindia Jackson, the spouse of Lee Ray Jackson, who survived him at his death, though said spouse is since deceased.

Under the War Risk Insurance Act, the term "parent" is defined, and the definition is "the term 'parent' includes a father, mother, grandfather, grandmother, step-father and step-mother, whether of the person in the service or of the spouse" (40 Stat. 401). Parents are among those made eligible in the permitted class of beneficiaries under the act, 38 U. S. C. A. 511, as above quoted.

The court below in part based its opinion upon the idea, expressed in its opinion (R. 71), that the peti-

tioners are not in the permitted class of beneficiaries. This seems to be a plain misconstruction of the acts defining the permitted class. We make this suggestion here, subject to our principal contentions set forth hereinabove.

Conclusion.

In conclusion, your petitioners submit that the construction of a Federal statute of prime importance is involved in this cause, and that although that construction has been before the State courts in a large and ever-increasing number of cases, this Court has not passed upon it.

The State courts have differed sharply upon the proper construction of the World War Veterans' Act, as to that section here involved, to wit, Section 303, being 38 U. S. C. A. 514, although the tremendous weight of authority laid down by said State decisions is in support of petitioners' contention here. Cases involving this provision of said act are numerous, and their number is steadily growing. They involve the distribution of large amounts of money. The question is one of distinct Federal interest, in that it involves the construction of an act of Congress and the determination of congressional policy in a matter of great national importance, that is, the administration of veterans' affairs under the provisions made by Congress for veterans of the late World War.

The question has not been decided by this Court, and confusion in State decisions is inevitable until

this Court does pass upon the matter, and lay down a clear and fixed rule as to the effect of the 1925 amendment to the Veterans' Act hereinabove referred to, and determine the true meaning of said provision and the extent to which it controls distribution of war-risk insurance funds to which it applies.

The decision of the State court below is not only contrary to the law, as announced by the decisions of other courts generally, which have passed upon the question, but is a plain misconstruction of the controlling act of Congress, and is contrary to sound principles of the laws of descent and distribution, established in this country.

Unless the errors in that decision be corrected by this Court, the effect will be to create regrettable confusion regarding questions of law which are of the utmost importance in the administration of war-risk insurance affairs.

We urge that the questions which this application suggests should be definitely settled by a decision by this Court, and that the intent, purpose and effect of Section 303, of the Veterans' Act, 38 U. S. C. A. 514, should be clearly defined, and the extent to which said section controls the distribution by State probate courts of war-risk insurance moneys involved, should be made clear by an expression of this Court, and that the decision below should be reversed, and this cause remanded to the Supreme Court of the State of Okla-

homa for further proceedings and determination consistent with the law as laid down by this Court.

Respectfully submitted,

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